

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

(Where the Basis of Payment is the Cost of the Work  
for a Lump Sum Firm Price)

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AMENDMENT NO. \_\_\_\_\_

EXHIBIT A	RFP No.
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EXHIBIT E	Alternate Prices.
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DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE  
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Article 1  
Agreement

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, by and between the

1.1 OWNER

State Of Arizona  
School Facilities Board  
Capital West Tower  
1700 West Washington, Suite 602  
Phoenix, Arizona 85007

and the

1.2 CONTRACTOR

(Name and Address)

for service in connection with the following

1.3 PROJECT

Notice to the parties shall be given at the above addresses.

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## Article 2

### GENERAL PROVISIONS

#### 2.1 TEAM RELATIONSHIP

The Arizona School Facilities Board (herein after referred to as ASFB) (Owner) and Project Manager and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Lump Sum Firm Price (herein after referred to as LSFP) and by the date of Substantial Completion, if they are established by Amendment No. \_\_\_\_\_. The Contractor agrees to procure the architectural and/or engineering services set forth below, and to furnish construction and administration of the Work.

#### 2.2 RELATIONSHIP OF THE PARTIES

**2.2.1 CONTRACTOR SERVICES** The Contractor shall provide professional architectural/engineering services for the Project in accordance with the terms and conditions of this Agreement. The Contractor's performance of services shall be as professional consultant to the ASFB and to carry out the activities of Project design and construction and to provide the technical documents and supervision of the design team to achieve the ASFB's Project objectives.

#### 2.2.2 ASFB REPRESENTATIONS

- 1 The Project Manager is under separate contract with the ASFB, working as agent to provide construction program management services. The Project Manager has no design responsibilities of any nature. None of the activities of the Project Manager supplant or conflict with the design, budget, or any other services and responsibilities customarily furnished by the Contractor or subconsultants in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. The Contractor understands and agrees that the Project Manager is the ASFB's representative to the Contractor insofar as this Agreement is concerned. All instructions by the ASFB to the Contractor relating to services performed by the Contractor will be issued or made through the Project Manager. All communications and submittals of the Contractor to the ASFB shall be issued or made through the Project Manager unless the Project Manager shall otherwise direct. The Project Manager shall not unreasonably withhold approval for the Contractor to communicate directly with the ASFB. The Project Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Contractor and to call periodic conferences to be attended by the Contractor, and the Contractor's subconsultants, throughout the term of this Agreement.
- 2 The Contractor understands and agrees that it is not a third-party beneficiary of any contract between the ASFB and the Project Manager or of their performance thereunder, and the Contractor waives any rights, claims, or causes of action it may have as an alleged third-party beneficiary of any such contract or of the performance of the parties thereunder, and covenants not to sue the Project Manager as a third-party beneficiary of any such contract or of the performance of the parties thereunder.
- 3 Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against the ASFB, the Project Manager, or the Contractor.

#### 2.2.3 CONTRACTOR REPRESENTATION

- 1 The Contractor shall provide a list of all consultants that the Contractor intends to utilize relating to the Project. The list shall include such information on the qualifications of the consultants as may be requested by the ASFB. The ASFB, through the Project Manager, reserves the right to review the consultants proposed, and the Contractor shall not retain a consultant to which the ASFB, through the Project Manager, has a reasonable objection. The ASFB shall pay the Contractor any increased costs of obtaining the services of consultants to replace those rejected by the ASFB.
- 2 The Contractor shall provide to the ASFB, through the Project Manager, a list of the proposed key project personnel of the Contractor and its consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the ASFB, through the Project Manager. Such key personnel and consultants shall be satisfactory to the ASFB and shall not be changed except with the consent of the ASFB. The ASFB's approval of substituted personnel shall not be unreasonably withheld.

**2.3 ARCHITECT/ENGINEER** Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Contractor or furnished by licensed employees of the Contractor, or as permitted by the law of the state where the Project is located. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Architect/Engineer. The Architect/Engineer for the Project is:

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**2.4 EXTENT OF AGREEMENT** This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. In the event language in this document contradicts or is in conflict with any other agreement, written or oral, this agreement language takes precedence.

## **2.5 DEFINITIONS**

### **1 The Contract Documents consist of:**

- a. Change Orders and written amendments to this Agreement signed by both the ASFB and Project Manager and Contactor, including Amendment No. 1 if executed;
- b. This Agreement except for the existing Contract Documents set forth in item (e) below;
- c. The most current Documents approved by the ASFB pursuant to Subparagraphs 3.1.4, 3.1.5 or 3.1.6;
- d. The information provided by the ASFB pursuant to Clause 4.1.2.1;
- e. The Contact Documents in existence at the time of execution of this Agreement which are set forth in Article 15;
- f. The ASFB's Program provided pursuant to Subparagraph 4.1.1.

In case of any inconsistency, conflict or ambiguity among the Contact Documents, the Documents shall govern in the order in which they are listed above.

- 2** The Work is the Design Phase Services procured in accordance with Paragraph 3.1, the LSFP Proposal provided in accordance with Paragraph 3.2, the Construction Phase Services provided in accordance with Paragraph 3.3, Additional Services that may be provided in accordance with Paragraph 3.8, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.
- 3** The term Day shall mean calendar day.
- 4** A Subcontractor is a person or entity who has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the ASFB and Project Manager or any separate contractor's subcontractors.
- 5** A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.
- 6** Substantial completion of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the ASFB can occupy or utilize the Project, or a designated portion, for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the ASFB and Project Manager and Contractor. The certificate shall state the respective responsibilities of the ASFB, Project Manager and Contactor for security, maintenance, heat utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction.
- 7** The ASFB's Program is an initial description of the ASFB's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- 8** Contractor as used in this agreement shall mean Design Builder.

## **ARTICLE 3**

### **CONTRACTOR'S RESPONSIBILITIES**

The Contractor shall be responsible for procuring the design and for the construction of the Work consistent with the ASFB's Program, as such Program may be modified by the ASFB during the course of the Work. The Contractor shall exercise reasonable skill and judgment in the performance of its services, but does not warrant or guarantee schedules and estimates other than those that are part of the LSFP proposal.

#### **3.1 DESIGN PHASE SERVICES**

- 1 PRELIMINARY EVALUATION** The Contractor shall provide a preliminary evaluation of the Project's feasibility based on the ASFB's Program and other relevant information.
- 2 PRELIMINARY SCHEDULE** The Contractor shall prepare a preliminary schedule of the Work for the ASFB and Project Manager's written approval. The schedule shall show the activities of the ASFB, Architect/Engineer and Contractor necessary to meet the ASFB and Project Manager's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Contractor shall recommend corrective action to the ASFB and Project Manager in writing. The work will be scheduled, planned and reported using the Critical Path Method (CMP) utilizing Primavera or Sure Trak software which is compatible with the ASFB scheduling program.
- 3 PRELIMINARY ESTIMATE** When sufficient Project information has been identified, the Contractor shall prepare for the ASFB and Project Manager's written approval a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the ASFB's budget, the Contractor shall make written recommendation to the ASFB and Project Manager.

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- 4 **SCHEMATIC DESIGN DOCUMENTS** The Contractor shall submit for the ASFB and Project Manager's written approval Schematic Design Documents, based on the ASFB's Program and other relevant information, Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale and their relationship to the site. One set of these documents shall be furnished to the ASFB and Project Manager. The Contractor shall update the preliminary schedule and estimate based on the Schematic Design Documents.
- 5 **DESIGN DEVELOPMENT DOCUMENTS** The Contractor shall submit for the ASFB and Project Manager's approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. Up to six (6) sets of these documents shall be furnished to the ASFB and Project Manager. The Contractor shall update the schedule and estimate based on the Design Development Documents.
- 6 **CONSTRUCTION DOCUMENTS** The Contractor shall submit for the ASFB and Project Manager's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications, including ASFB and Project Manager supplied general conditions and general requirements, based upon codes, laws or regulations enacted at the time of their preparation. Construction shall be in accordance with these approved Construction Documents. Up to six (6) sets of these documents shall be furnished to the ASFB and Project Manager prior to commencement of construction.
- 7 **OWNERSHIP OF DOCUMENTS** The ASFB acknowledges the Contractor's construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the ASFB upon completion of the Work and payment in full of all monies due to the Contractor. The Contractor shall not use the drawings and specifications, therefore, for any purpose not related to the Project without ASFB's consent. The ASFB shall not reuse or make any modification to the plans and specifications without the prior written authorization of the Contractor. The ASFB agrees to the fullest extent permitted by law, to indemnify and hold the Contractor harmless from any claim, liability or cost (including reasonable attorney's fees and defense cost) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the ASFB or any person or entity that acquires or obtains the plans and specifications from the or through the ASFB without the written authorization of the Contractor.
- 8 **PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND:** Bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder, each in the amount of one hundred percent (100%) of the Contract Sum, shall be submitted to the Owner together with the executed ASFB Design-Build Agreement, within ten (10) days after issuance of Letter of Intent to Award Contract. The ASFB shall also require from all Subcontractors whose contract with the Prime Contractor exceeds One-Hundred-Thousand Dollars (\$100,000.00), Subcontractor Performance and Payment Bonds in an amount equal to one hundred percent (100%) of each Subcontract price, which bonds shall list both the Prime Contractor and the Arizona School Facilities Board as named obligee. Such bonds shall be issued by "A" rated surety company and furnished to the Contractor prior to commencement of any work by any such Subcontractor. Such bonds shall be issued by a surety company, acceptable to the Owner and duly authorized and licensed by the Arizona Department of Insurance to do business in the State of Arizona, and shall be payable to the Arizona School Facilities Board. The Attorney-in-Fact who executes the bonds on behalf of surety shall affix thereto a certified and current copy of his Power of Attorney. The format provided in the specifications must be used as the format for the Performance and Payment Bonds.

## 3.2 LUMP SUM FIRM PRICE (LSFP) PROPOSAL

- 1 When schematic design drawings and specifications are approved by the ASFB and Project Manager, the Contractor shall, if requested by the ASFB and Project Manager, propose a LSFP, which shall be the sum of the estimated Cost of the Work as defined in Article 8 and the contractor's Fee as defined in Article 7. The LSFP is subject to modification as provided in Article 9.
- 2 If a LSFP is not established, all references in this Agreement to the LSFP shall not be applicable, and the parties shall proceed on the basis of reimbursement as provided in Article 7 and 8. In the absence of a LSFP, however, the parties may establish a date of Substantial Completion.
- 3 The estimated Cost of the Work may include the Contractor's contingency, a sum established by the Contractor for use at the Contractor's discretion to cover costs that are properly reimbursable as a Cost of the Work but are not the basis for a Change Order.
- 4 **BASIS OF LUMP SUM FIRM PRICE** The Contractor shall include with the LSFP proposal a written statement of its basis, which shall include:
  - a A list of the drawings and specifications, including all addenda, which were used in preparation of the LSFP proposal;
  - b A list of allowances and a statement of their basis;
  - c A list of the assumptions and clarifications made by the Contractor in the preparation of the LSFP proposal to supplement the information contained in the drawings and specifications;
  - d The date of Substantial Completion upon which the proposed LSFP is based, and the Schedule of Work upon which the date of Substantial Completion is based;
  - e Schedule of applicable alternate prices;
  - f Schedule of applicable unit prices;
  - g Statement of Additional Services included, if any; and
  - h The time limit for acceptance of the LSFP proposal.

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- 5 The Contractor shall meet with the ASFB and Project Manager to review the LSFP proposal. In the event that the ASFB and Project Manager discover any inconsistencies or inaccuracies in the information presented, the ASFB and Project Manager shall promptly give written notice to the Contractor, who shall make appropriate adjustments to the LSFP, its basis or both.
- 6 Unless the ASFB accepts the LSFP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Contractor, the LSFP proposal shall not be effective without written acceptance by the Contractor.
- 7 Prior to the ASFB's acceptance of the Contractor's LSFP proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the ASFB and Project Manager may specifically authorize in writing.
- 8 Upon acceptance by the ASFB and Project Manager of the LSFP proposal, the LSFP and its basis shall be set forth in Amendment No. 1. The LSFP and the date of Substantial Completion shall be subject to modification by changes in the Work as provided in Articles 6 and 9.
- 9 The LSFP shall include in the Cost of the Work and all taxes applicable at the time the LSFP is established. If in accordance with the ASFB and Project Manager's direction an exemption is claimed for taxes, the ASFB and Project Manager agree to indemnify, defend and hold the Contractor harmless for any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the ASFB and Project Manager's direction.

## 3.3 CONSTRUCTION SERVICES

- 1 Construction will commence upon the issuance by the ASFB and Project Manager of a written notice to proceed with construction. If construction commences prior to execution of Amendment No.1, the ASFB and Project Manager's written notice to proceed shall list the documents that are applicable to the part of the Work which the ASFB and Project Manager has authorized.
- 2 In order to complete the Work, the Contractor shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.
- 3 The Contractor shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement, which govern the proper performance of the Work.
- 4 The Contractor shall prepare and submit a Schedule of Work for the ASFB and Project Manager's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the construction including the dates when information and approvals are required from the Owner. It shall be revised as required by the conditions of the Work. Schedule software shall be compatible with ASFB scheduling software, which is Primavera or Sure Trak.
- 5 The Contractor with the assistance of the Project Manager shall secure and the ASFB shall pay for the building permits necessary for the construction of the Project.
- 6 The Contractor shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. The Contractor, directly or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by the ASFB and Project Manager or their employees, agents, separate contractors or tenants. The ASFB and Project Manager agree to cause their employees, agents separate contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.
- 7 The Contractor shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The ASFB and Project Manager shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Contractor shall preserve all such records for a period of five years after the final payment or longer where required by law.
- 8 The Contractor shall provide periodic written reports to the ASFB and Project Manager on the progress of the Work as agreed to by the ASFB and Project Manager and Contractor.
- 9 The Contractor shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the ASFB and Project Manager at mutually agreeable intervals.
- 10 At all times the Contractor shall maintain the site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, the Contractor shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

## 3.4 HAZARDOUS MATERIAL

- 1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and /or clean-up. The Contractor shall not be obligated to commence or continue Work until any known or suspected Hazardous Material discovered at the Project site has been removed, rendered or determined to be harmless by the ASFB and Project Manager as certified by an independent testing laboratory and approved by the appropriate government agency.

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- 2 If after the commencement of the Work, known or suspected Hazardous Material is discovered at the Project site, the Contractor shall be entitled to immediately stop Work in the affected area, and the Contractor shall report the condition to the ASFB and Project Manager and, if required, the government agency with jurisdiction.
- 3 The Contractor shall not be required to perform any Work relating to or in the area of known or suspected Hazardous Material without written mutual agreement.
- 4 The ASFB shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the ASFB, and shall be performed in a manner minimizing any adverse effect upon the Work of the Contractor. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless.
- 5 If the Contractor incurs additional costs and/or is delayed due to the presence of known or suspected Hazardous Material, the Contractor shall be entitled to an equitable adjustment in the LSFP and/or the date of Substantial Completion.

## 3.5 INDEMNIFICATION

- 1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the ASFB, School District, Project Manager, and agents and employees (collectively "Indemnitees") of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs and the cost of appellate proceedings, arising out of or resulting from, either directly or indirectly, the performance of the Work or the conditions of the Site, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself) including loss of use resulting therefrom, but only to the extent caused by a negligent act or omission of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this paragraph. The Contractor, at its own expense and risk, shall defend all legal proceedings that may be brought against the Indemnitees on any such claim, damage, loss or expense, and satisfy any resulting judgment that may be rendered against any of them.
- 2 In claims against any person or entity indemnified under this paragraph by anyone directly or indirectly employed by the Contractor, a Subcontractor, or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or employee benefit acts.
- 3 The terms of this Paragraph 3.4 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

## 3.6 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the ASFB, and Project Manager harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

## 3.7 WARRANTIES AND COMPLETION

- 1 The Contractor warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship, materials and hazardous materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion. The Contractor agrees to correct all construction performed under this Agreement which proves to be defective in workmanship and materials within a period of two years from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.
- 2 Those products, equipment, systems or materials incorporated in the Work at the direction of or upon the specific request of the Project Manager shall be covered exclusively by the warranty of the manufacturer. There are no warranties, which extend beyond the description on the face thereof. All other warranties expressed or implied including the warranty of merchantability and the warranty of fitness for a particular purpose are expressly disclaimed.
- 3 The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the ASFB and Project Manager.
- 4 The Contractor shall collect all written warranties and equipment manuals and deliver them to the ASFB and Project Manager.
- 5 With the assistance of the ASFB's maintenance personnel, the Contractor shall direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

## 3.8 ADDITIONAL SERVICES

Any Additional Services must be authorized in advance by the Project Manager in writing; the Contractor shall furnish or obtain from others the authorized services. The Contractor shall be paid for these additional services by the ASFB as herein provided to the extent they exceed the obligation of the Contractor under this Agreement. Example of potential additional services are as follows:

- 1 Providing financial feasibility or other special studies.
- 2 Providing planning surveys or alternative site evaluations.

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- 3 Providing design services relative to future facilities, systems and equipment that, are not intended to be constructed as part of the Project, other than general planning and Master Planning for future work as indicated by the Program of Requirements.
- 4 Making major revisions in Drawing, Specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the ASFB or are due to causes beyond the control and without the fault and negligence of the Contractor or its consultants or agents.
- 5 Preparing supporting data and other services in connection with any Project Manager-initiated change order if the Basic Compensation is not commensurate with the services required of the contractor.
- 6 Providing soils sampling, classification, and analysis; however, analysis of existing soils information and soils analysis during the Design and recommendations needed during the Construction Phase of the Project are not considered additional services.
- 7 Preparing to serve or serving as an expert witness for the ASFB in connection with any public hearing, arbitration proceeding, or legal proceeding; however, preparing to serve or serving as a fact witness for the ASFB or rendering testimony necessary to secure governmental approval of zoning or land-use clearances for the Project shall not constitute an additional service.
- 8 Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats.
- 9 Providing additional services and costs necessitated by out-of-town travel required of and approved by the ASFB other than visits to the Project and other than for travel required to accomplish the Work.
- 10 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted Contractual practices consistent with the term of this Agreement.
- 11 Providing design and engineering of any work outside the property line.
- 12 Providing consultation concerning replacement of Work damaged by fire or other causes during construction, furnishing services required in connection with the replacement of such work.
- 13 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the ASFB or the Contractor under the Construction Contract.
- 14 Providing services in evaluating an extensive number of claims, not related to any Contractor's design errors and omissions, submitted by the Contractor or others in connection with the work.
- 15 Preparing documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Construction Documents Phase.
- 16 Providing special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the project.
- 17 Providing services to extensively investigate existing conditions or facilities or to make measured drawing thereof.
- 18 Providing services to verify the accuracy of drawings or other information furnished by the ASFB.
- 19 Providing analyses of owning and operating costs.
- 20 Providing interior design and other similar services required for or in connection with the selection, procurement, or installation of furniture, furnishings, and related equipment.
- 21 Making revisions to design documents after they have been approved by the Project Manager when revisions are due to causes beyond the control of the Contractor.
- 22 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the ASFB, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

## ARTICLE 4

### ASFB RESPONSIBILITIES

#### 4.1 INFORMATION AND SERVICES PROVIDED BY ASFB

- 1 The ASFB shall provide full information in a timely manner regarding requirements for the Project, including the Owner's Program and other relevant information.
- 2 The ASFB shall provide:
  - a All necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
  - b Inspection and testing services during construction as required by law or as mutually agreed; and



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- c Unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessment, necessary permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required serviced.

- 3 The Contractor shall be entitled to rely on the completeness and accuracy of the information and services required by this Paragraph 4.1.

## 4.2 ASFB RESPONSIBILITIES DURING DESIGN PHASE

The ASFB shall provide the Program at the inception of Design and shall review and timely approve schedules, estimates, Schematic Design Document, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Paragraph 3.2.

## 4.3 ASFB RESPONSIBILITIES DURING CONSTRUCTION

- 1 The ASFB and Project Manager shall review and timely approve the Schedule of the Work as set forth in Subparagraph 3.3.4
- 2 If the ASFB and Project Manager become aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the ASFB and Project Manager shall give prompt written notice to the Contractor.
- 3 The ASFB and Project Manager shall communicate with the Contractor's Subcontractors and suppliers only through the Contractor. The ASFB and Project Manager shall have no contractual obligations to Subcontractors or suppliers.
- 4 The ASFB shall provide insurance for the Project as provided in Article 11.

## 4.4 THE PROJECT MANAGER

The Project Manager's representative is

- 1.

And;

- 2 Is under contract with the ASFB;
- 3 Shall be fully acquainted with the Project;
- 4 Agrees to furnish the information and services required of the ASFB pursuant to Paragraph 4.1 so as not to delay the Contractor's Work; and
- 5 Shall have authority to bind the ASFB in all matters requiring the ASFB's approval, authorization or written notice. If the ASFB changes their representative or the representative's authority as listed above, the ASFB shall notify the Contractor in advance in writing.

## ARTICLE 5

### SUBCONTRACTS

Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

## 5.1 RETAINING SUBCONTRACTORS

The Contractor shall not retain any Subcontractor to whom the ASFB and Project Manager has a reasonable and timely objection, provided that the ASFB agrees to compensate the Contractor for any additional costs incurred by the Contractor as a result for such objections. The Contractor shall not be required to retain any Subcontractor to whom the Contactor has a reasonable objection.

## 5.2 MANAGEMENT OF SUBCONTRACTORS

The Contractor shall be responsible for the management of the Subcontractors in the performance of their work.

## 5.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS

The Contractor shall provide for assignment of subcontract agreements in the event that the ASFB terminates this Agreement for cause as provided in Paragraph 12.2. Following such termination, the ASFB shall notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

## ARTICLE 6 CONTRACT TIME

### 6.1 COMMENCEMENT OF THE WORK

The Work shall commence on or about \_\_\_\_\_ and shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to the provisions of Paragraph 3.4.

### 6.2 SUBSTANTIAL COMPLETION

The work shall be substantially complete on \_\_\_\_\_.

### 6.3 DELAYS IN THE WORK

- 1 If causes beyond the Contractor's control delay the progress of the Work, then the LSFP and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the ASFB and Project Manager or separate contractors employed by the ASFB, preventing the Contractor from performing the Work, pending dispute resolution, Hazardous Materials, differing site conditions, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances.
- 2 In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

## ARTICLE 7 COMPENSATION

### 7.1 DESIGN PHASE COMPENSATION

- 1 The cost of services performed directly by the Architect/Engineer is computed separately and is independent from the Contractor's compensation for work or services directly performed by the Contractor; these costs shall be shown as separate items on the application for payment. If an Architect/Engineer is retained by the Contractor, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the Contractor and Architect/Engineer.
- 2 The ASFB shall compensate the Contractor for services performed during the Design Phase as described in Paragraph 3.1, including preparation of a LSFP proposal as described in Paragraph 3.2, as follows:

**(State whether a stipulated sum, actual cost, or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.)**

#### NOT APPLICABLE

- 3 Compensation of Design Phase Services shall be equitably adjusted if such services extend beyond \_\_\_\_\_ from the date of this Agreement for reasons beyond the reasonable control of the Contractor or as provided in Paragraph 9.1. For changes in Design Phase Services, compensation shall be adjusted as follows:

- 4 Payments for Design Phase Services shall be due and payable within thirty (30) days following presentation of the Contractor's monthly invoice to the ASFB and Project Manager.

### 7.2 CONSTRUCTION PHASE COMPENSATION

- 1 The ASFB shall compensate the Contractor for Work performed following the commencement of the Construction Phase on the following basis:
  - a Schedule of Values
- 2 The compensation to be paid under the Paragraph 7.3 shall be limited to the LSFP established in Amendment No. 1, and the LSFP may be adjusted under Article 9.
- 3 Payment for Construction Phase Services shall be as set forth in Article 10. If Design Phase Services continue to be provided after construction has commenced, the Contractor shall also continue to be compensated as provided in Paragraph 7.1, or as mutually agreed.

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

## ARTICLE 8 COST OF THE WORK

The ASFB agrees to pay the Contractor for the Cost of the Work as defined in this Article. This payment shall be in addition to the Contractor's Fee stipulated in Article 7.

### 8.1 COST ITEMS FOR DESIGN PHASE SERVICES

Compensation for Design Phase Services as provided in Paragraph 7.2.

### 8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

- 1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work.
- 2 Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:
  - 3 Cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under Subparagraphs 8.2, 1 and 8.2, 2.
  - 4 Reasonable transportation, travel and hotel expenses of the Contractor's personnel incurred in connection with the Work.
  - 5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection, testing, transportation, storage and handling.
  - 6 Payments made by the Contractor to Subcontractors for work performed under this Agreement.
  - 7 Fees and expenses for design services procured by the Contractor except as provided by the Architect/Engineer and compensated in Paragraph 7.2.
  - 8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value; and cost less salvage on such items used, but not consumed that remain the property of the Contractor. The Contractor shall reimburse the ASFB for the salvage value of items used or salvage the items to the ASFB.
  - 9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area.
  - 10 Cost of premiums for professional liability insurance, as required by Article 11, is to be identified as a separate line item within the LSFP.
  - 11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Contractor is liable.
  - 12 Permits, fees, licenses, tests, except as outlined in 3.3, 5 and 4.1, 2.
  - 13 All costs associated with establishing, equipping, operation, maintaining and demobilizing the field office.
  - 14 Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the site and reasonable petty cash expenses at the field office.
  - 15 All water, power and fuel costs necessary for the Work.
  - 16 Cost of removal of all non-hazardous substances, debris and waste materials.
  - 17 Costs incurred due to an emergency affecting the safety of persons and/or property.
  - 18 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contractor's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

### 8.3 DISCOUNTS

All discounts for prompt payment shall accrue to the ASFB to the extent such payments are made directly by the ASFB. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

## ARTICLE 9

### CHANGES IN THE WORK

Changes in the Work, which are within the general scope of this Agreement may be accomplished by Change Order without invalidating this Agreement.

#### 9.1 CHANGE ORDERS

A Change Order is a written instrument, issued after execution of this Agreement, signed by the ASFB and Contractor stating their agreement upon a change and the adjustment in the LSFP.

#### 9.2 DETERMINATION OF COST

An increase or decrease in the LSFP resulting from a change in the Work shall be determined by one or more of the following methods:

- 1 Unit prices set forth in this Agreement or as subsequently agreed;
- 2 A mutually accepted, itemized lump sum;
- 3 Costs determined as defined in Paragraph 7.2 and Article 8 and a mutually acceptable Contractor's Fee as determined in Subparagraph 7.5, 1.
- 4 If an increase or decrease cannot be agreed to as set forth in subparagraphs 9.2, 1 and 9.2, 2 and the ASFB issues a written order for the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change.

#### 9.3 NO OBLIGATION TO PERFORM

The Contractor shall not be obligated to perform changed Work until a Change Order has been executed by the Project Manager, Signed by the Contractor and Approved by the ASFB, except as provided in Subparagraph 9.2, 4.

#### 9.4 ADJUSTMENT OF UNIT PRICES

If a proposed Change Order alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the ASFB and Project Manager or the Contractor, the unit prices shall be equitably adjusted.

#### 9.5 UNKNOWN CONDITIONS

If in the performance of the Work the Contractor finds latent, concealed or subsurface physical conditions which differ from the conditions the Contractor reasonable anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, then the LSFP compensation f and /or the date of Completion shall be equitably adjusted by Change Order within 10 days after the conditions are first observed.

#### 9.6 CLAIMS FOR ADDITIONAL COST OR TIME

For any claim for an increase in the LSFP compensation and/or an extension in the date of Completion, the Contractor shall give the ASFB and Project Manager written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the ASFB and Project Manager, but which do not proceed, shall be made within ten (10) days after the decision is made not to proceed. Any change in the LSFP compensation and/or date of Substantial Completion resulting from such claim shall be authorized by Change Order.

#### 9.7 EMERGENCIES

In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the LSFP compensation and/or extension of the date of Substantial Completion on account of emergency work shall be determined as provided in this Article.

## ARTICLE 10

### PAYMENT FOR CONSTRUCTION PHASE SERVICES

#### 10.1 PROGRESS PAYMENTS

- 1 On the fifteenth (15<sup>th</sup>) day of each month after the Construction Phase has commenced, the Contractor shall submit to the ASFB and Project Manager an Application for Payment consisting of the Cost of the Work performed up to the 10th day of the month, including the cost of material stored on the site or at other locations approved by the ASFB and Project Manager, along with a proportionate share of the contractor's Fee. Prior to submission of the next Application for Payment, the Contractor shall furnish to the ASFB and Project Manager a statement accounting for the disbursement of funds received under the previous Application. The extent of such statement shall be as agreed upon between the ASFB and Project Manager and Contractor.
- 2 Within thirty (30) days after receipt of each monthly Application for Payment, the ASFB shall pay directly to the contractor the appropriate amount for which Application for Payment is made, less amounts previously paid by the ASFB.

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

- 3 The Contractor warrants and guarantees the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the ASFB upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."
- 4 The ASFB's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of the "Contract Documents".
- 5 Upon Substantial Completion of the Work, the ASFB shall pay the Contractor the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Contractor's Fee, less a sum equal to the Contractor's estimated cost of completing any unfinished items as agreed to between the ASFB and Project Manager and Contractor as to extent and time for completion. The ASFB thereafter shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.

## 10.2 FINAL PAYMENT

- 1 Final payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Contractor's Fee, less the initial payment made under Paragraph 7.1 shall be due and payable when the Work is fully completed and accepted by the ASFB and Project Manager. Before issuance of final payment, the ASFB and Project Manager may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.
- 2 In making final payment the ASFB waives all claims except for:
  - a Outstanding liens;
  - b Improper workmanship of defective materials appearing within one year after the date of Substantial Completion;
  - c Work not in conformance with the Contract Documents; and
  - d Terms of any special warranties required by the Contract Documents.
  - e Right to audit Contractor records for a period of five years.
- 3 In accepting final payment, the Contractor waives all claims except those previously made in writing and which remain unsettled.

## ARTICLE 11

### INSURANCE

#### 11.1 PROFESSIONAL LIABILITY INSURANCE

The Architect/Engineer's professional liability insurance for claims arising from the negligent performance of professional services under this Agreement shall be written for not less than \$\_\_\_\_\_ per claim and in the aggregate with a deductible not to exceed \$\_\_\_\_\_ for \_\_\_\_\_ year(s) after the date of Substantial Completion. If the Architect/Engineer retains consultants for a portion of the design, their professional liability insurance coverage, including deductible amounts, shall be set forth in Article 15 of this Agreement.

#### 11.2 OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

##### 11.2.1 OCIP COVERAGES

The ASFB will insure this project under an Owner Controlled Insurance Program ("OCIP").

The ASFB will secure and maintain policy(ies) insuring Contractor, Subcontractor, Sub-Subcontractors and their employees while performing Work at the Site for the types of insurance shown in Subparagraphs 11.2.1.1 and 11.1.1.2, until Substantial Completion of the Work, or in the case of the Subcontractor, substantial completion of the Subcontract. Owner has secured and will maintain Builder's Risk insurance with a limit of liability equal to the final completed value of the Work as described in Subparagraphs 11.2.1.3.

For the purposes of this Article only, a Subcontractor has substantially performed its Subcontract when the Subcontractor's scope of work is fully usable by the Contractor for its intended purpose without inconvenience to or risk of harm to Contractor and when the Subcontractor is no longer providing continuous or uninterrupted services at the Site. If the provisions of the preceding sentence are met, Subcontractor has substantially performed its Subcontract even though punch list items, warranty related work or minor corrections remain to be performed.

##### 11.2.1.1 WORKERS' COMPENSATION

Workers' Compensation Insurance, in conformance with the laws of the State of Arizona or imposed by any federal statutes, and Employers' Liability Insurance with a limit of not less than \$1 million for Bodily Injury by Accident, \$1 million for Bodily Injury by Disease, and \$1 million for Bodily Injury for Disease—Policy Limits.

##### 11.2.1.2 COMMERCIAL GENERAL LIABILITY

Commercial General Liability Insurance, insuring against Bodily Injury, Personal Injury, Advertising Injury and Property Damage with limits of liability as follows.

Per Occurrence \$2,000,000

Annual Aggregate per School ASFB \$20,000,000

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

The insurance includes coverage for Contractual Liability, Contractor's Protective Liability, Broad Form Property Damage, Products and Completed Operations, incidental medical liability, and the hazards commonly referred to as "XCU." The insurance also contains a severability of interest provision, and the Products and Completed Operations coverage is extended five (5) years past the Substantial Completion of the Work under this Contract.

## **11.2.1.3 BUILDER'S RISK INSURANCE**

ASFB has secured and will maintain Builder's Risk insurance with a limit of liability equal to the final completed value of the Work. The coverage shall be written on an all risk of direct damage basis and shall include coverage for flood, water damage, earthquake and earth movement.

This insurance shall cover at the Work construction site, at any off-site storage location, and while in transit, any and all materials, equipment, machinery, tools, and supplies, including buildings, and all temporary structures at the construction site, to be used in or incidental to the fabrication, erection, testing, or completion of the Work.

This insurance shall cover the insured property against all direct damage, except but not limited to, war and related causes, nuclear perils, infidelity of employees, mysterious disappearance, and ordinary wear and tear. The insurance may exclude the cost of making good any faulty workmanship, material, construction, or design, but is intended specifically to cover loss or damage arising as a consequence of these perils.

This insurance may also cover against consequential losses that may occur if there is a delay in the completion of the Work resulting from an insured peril. Unless approved in writing by the OCIP provider, losses payable by this insurance are non-recoverable costs to the Contractor through a change order. A deductible of \$5,000 per each claim will be for the account of and payable by the Contractor. The cost of the deductible may not be included in any change order to the ASFB.

## **11.2.2 PRIMARY AND NON-CONTRIBUTING**

The insurance described in Subparagraph 11.2.1 is subject to the terms, conditions and exclusions of the policy(ies) which will be provided at the start of the Work. The insurance described in Section 11.2.1.2 is primary insurance and non-contributing with any other insurance carried by Contractor. The ASFB is not providing excess coverage to Contractor. Limits under the OCIP are designed for ease of coordination with Contractor's excess/umbrella liability policy. Contractor may want to direct its insurance professional to schedule the OCIP policy with its excess/umbrella insurer.

## **11.2.3 APPLICATION FOR INSURANCE AND CONTRACTOR/SUBCONTRACTOR ENROLLMENT PACKAGE**

Unless waived in writing by the ASFB, Contractor and all Subcontractors shall, prior to performing any Work at the Site and as a condition precedent to the ASFB providing the insurance coverage described in Subparagraphs 11.2.1 above, furnish a completed application for insurance and shall cooperate with the OCIP administrators and insurers regarding such application. A manual is available and shall be provided to the Contractor from Owner or OCIP Provider in connection with this Contract, which describes the procedures for Contractor to enroll in and comply with the OCIP ("Contractor/Subcontractor Enrollment Package"). Contractor shall complete the application form and payroll report forms and follow the procedures as outlined in the Contractor/Subcontractor Enrollment Package. **Contractor shall include this Section 11.2 in its Contract with Subcontractors providing Work at the Site and shall insure that such Subcontractors receive the Contractor/Subcontractor Enrollment Package, enroll in the OCIP, and comply with the OCIP procedures prior to the start of Subcontractor's Work.**

## **11.2.4 OCIP CERTIFICATES OF INSURANCE**

The OCIP insurers shall issue Certificates of Insurance, as appropriate, for the Workers' Compensation and Commercial General Liability insurance coverage specified in Subparagraph 11.2.

## **11.2.5 CONTRACT OBLIGATIONS**

The insurance, as provided by the ASFB for Contractors and Subcontractors under this Subparagraph 11.2, is not intended to, and shall not be construed to limit, qualify, or waive any liabilities or obligations of Contractor or Subcontractors, assumed or otherwise, under this Contract.

## **11.2.6 RIGHTS OF INSURED AGAINST OTHER INSURED**

Inclusion of more than one insured, under such insurance, shall not operate to impair the rights of one insured against another insured, and except for the limits of liability, the coverages afforded by such insurance shall apply as though a separate policy had been issued to each insured.

## **11.2.7 PREMIUM OBLIGATIONS**

Contractor shall not, by reason of its inclusion under the insurance provided by the OCIP, incur a liability for payment of premium for such insurance. Contractor shall not be entitled to return premiums, premium refunds, dividends, refunds, discounts, or other credits, and any other amounts due or to become due to them in connection with such insurance.

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

## 11.2.8 COMBINED LIMITS

Should Contractor enter into more than one (1) Contract with Owner and be issued more than one (1) Certificate of Commercial General Liability insurance, or should a Subcontractor enter into more than one (1) Subcontract and be issued more than one (1) Certificate of Commercial General Liability insurance, limits shall apply on an occurrence basis with an annual aggregate for each ASFB, as stated in Subparagraph 11.2.1.2.

## 11.2.9 PERFORMANCE OF CONTRACT TO EXCLUDE INSURANCE COST

Compensation payable to Contractor for the performance of the Work shall exclude all costs of insurance as it relates to the coverage described and provided in this Subparagraph 11.2. Costs for overlapping insurance coverage maintained by Contractor shall not be reimbursable.

## 11.2.10 EXCLUDED INSURANCE COST AND PRICING DATA

The Contractor must certify that the insurance costs are excluded. The Contractor shall keep its books and records related to its excluded insurance cost and pricing data for three years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in writing by the governing board. The Contractor shall also contractually require its subcontractors to do the same for the express benefit of the ASFB. The ASFB or its authorized representative shall have the right to inspect such books and records at any reasonable time and place. If the ASFB determines that the certified cost and pricing data was inaccurate, incomplete or not current as of the date the Contractor submitted its bid, the ASFB may reduce the Contract Sum by the amount of the defect plus related overhead and profit or fee. The Contractor may appeal such a determination under applicable appeal or claim procedures, but the adjusted Contract Sum shall remain in effect pending the outcome.

## 11.2.11 TERMINATION OF OCIP

The ASFB has the option to terminate any and all of the OCIP insurance coverage at any time. The ASFB shall notify Contractor, in writing sixty (60) days in advance of exercising this option, to terminate such insurance, and thereafter, Contractor and its Subcontractors shall obtain and maintain for the duration of the Work, the insurance as required by Owner. Cost of such insurance shall be reimbursable, provided Contractor furnishes satisfactory evidence to The ASFB of such insurance.

## 11.2.12 PROJECT INSURANCE MANUAL

Refer to the Project Insurance Manual for procedures on how to request Certificates of Insurance and how to report loss or damage that may be covered by the OCIP.

## 11.2.13 PRICING DATA

The ASFB has determined that the Contractor pricing data regarding insurance costs charged to the ASFB are essential to determine if the Contract Sum is reasonable and fair. The Contractor and all its Subcontractors and Sub-Subcontractors are required to submit such pricing data with its bid and requests for additions to the Contract Sum and certify that the data is accurate, complete and current. If the pricing data certification is inaccurate, the Contract Sum may be adjusted by the ASFB to correct the inaccuracy. This may include reducing the Contract Sum by the amount of the defect plus related overhead and profit or fees. To ensure the accuracy of the Contractor's certified pricing data the ASFB or its authorized representative may audit the Contractor, Subcontractors and Sub-Subcontractors' records, which shall be maintained for three (3) years from date of Final Payment.

## 11.3 CONTRACTOR PROVIDED INSURANCE

### 11.3.1 CONTRACTOR-PROVIDED INSURANCE (WITH OCIP)

Prior to the commencement of construction of the Work, the Contractor shall cause to be obtained with insurers and in amounts acceptable to the ASFB, insurance in the following forms:

- 1 Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) per occurrence with respect to all vehicles used in the performance of the Work on or off the Site, whether owned, non-owned, leased, hired, assigned, or borrowed.
- 2 Contractor's equipment insurance covering owned, non-owned, leased equipment used in connection with the construction of the Work.
- 3 Commercial crime insurance, which shall cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery or alteration, or computer fraud.

**11.3.2** The insurance required by Subparagraph 11.3.1 shall remain in effect until the ASFB has accepted its Certificate of Occupancy for the entire Work, and the Contractor and the ASFB have agreed in writing that the Work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

- 11.3.3** The policies required by Subparagraph 11.3.1. herein shall be endorsed to include the ASFB and the School ASFB, as well as their agents, officials, and employees as insureds and shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the School ASFB, or their agents, officials or employees shall be excess and not contributory to insurance required by Subparagraph 11.3.1.1.
- 11.3.4** The Contractor shall cause insurers providing the policies required by Subparagraph 11.3.1 to waive all rights of recovery against the ASFB and the School ASFB, as well as their agents, officials and employees.
- 11.3.5** Contractor shall provide, and cause subcontractors to provide, certificates of insurance from insurers acceptable to the ASFB prior to commencement of the construction of the Work as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificates shall identify this Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated, reduced, or materially changed until after sixty (60) days prior written notice has been given to the ASFB. Certificates of insurance and any notice of cancellation or material change should be addressed as follows:

**ARIZONA SCHOOL FACILITIES BOARD  
CAPITAL WEST TOWER  
1700 WEST WASHINGTON, SUITE 602  
PHOENIX, ARIZONA 85007**

- 11.3.6** The ASFB reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.
- 11.3.7** All insurance policies required by this Subparagraph 11.3.1 shall be obtained from a financially sound insurance company rated not less than B+ (Very Good) XII by A.M. Best Company, and be authorized to do business in the State of Arizona.
- 11.3.8** Costs of all insurance coverages required by Subparagraph 11.3.1 are the sole responsibility of the Contractor.
- 11.3.9** The stipulation of insurance coverages in this Subparagraph 11.3.1 shall not be construed to limit, qualify, or waive any liabilities or obligations of Contractor, assumed or otherwise, under this Contract.

## **11.4 EFFECT OF SUBMISSION OF CERTIFICATES**

The ASFB shall review any Certificates of Insurance provided by the Contractor or to check or verify the Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. The Contractor is fully liable for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by the Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.

## **11.5 FAILURE OF COMPLIANCE**

Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, or should a dispute arise between the ASFB and any insurance company of Contractor over policy coverage or limits of liability as required herein, the ASFB shall be entitled to recover from the Contractor all amounts payable, as a matter of law, to the ASFB or any other parties, had the required insurance or insurance coverage been in force. Said recovery shall include, but is not limited to interest for the loss of use of such amounts of money, plus all attorney's fees costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Contractor or insurance company to comply with the provisions of the Contract Documents, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Contractor is responsible as a matter of law.

## **11.6 INDEMNITY**

The Contractor shall indemnify and save harmless the ASFB, the School District or the Project Manager from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgment of every nature and description brought or recovered against him by reason of any omission or act of the Contractor, his agents or employees in the execution of the work and in the guarding of it.

## **ARTICLE 12**

### **PROTECTION OF PERSONS AND PROPERTY**

#### **12.1 SAFETY PRECAUTIONS AND PROGRAMS**

- 12.1.1** The ASFB, the OCIP provider or their agents employees or representatives, are not responsible for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.



# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

**12.1.2** Any notice given to the Contractor by the ASFB or OCIP provider of a safety or property protection violation will not: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said provider to inspect or review Contractor's safety program or precautions or to enforce Contractor's compliance with the requirements of this Article 12; and (3) impose any continuing obligation upon the ASFB or the OCIP provider to provide such notice to Contractor or any other person or entity.

## **12.2 SAFETY OF PERSONS AND PROPERTY**

**12.2.1** The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- 1** All employees on the Work and all other persons who may be affected thereby;
- 2** The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or the Contractor's Subcontractors, regardless of tier; and
- 3** Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities not designated for removal, relocation or replacement in the course of construction.
- 4** The Contractor's safety precautions shall fully comply with the OCIP provider's minimum safety guidelines. Compliance with the minimum safety guidelines does not relieve the Contractor of any other contractual or legal duty to reasonably protect against the above defined damage, injury or loss. The contractor is solely responsible for implementation of the minimum safety guidelines and all other project safety requirements.

**12.2.2** The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

**12.2.3** The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the School ASFB and users of adjacent utilities.

**12.2.4** When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

**12.2.5** The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 12.2.1.2 and 12.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, and Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clause 12.2.1.2 and 12.2.1.3, except damage or loss caused by the acts or omissions of the ASFB or anyone directly or indirectly employed by it, or by anyone for whose acts the ASFB may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 3.4.6.

**12.2.6** The Contractor shall designate a responsible member of his organization at the sites whose duty shall be the prevention of accidents and monitoring of the Work to insure compliance with all applicable laws, ordinances, rules, regulations and lawful orders of public authority bearing on the safety of persons or protection of property. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the ASFB.

## **12.3 EMERGENCIES**

In any emergency affecting the safety of persons property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 9 for Changes in the Work.

## **ARTICLE 13**

### **TERMINATION OF THE AGREEMENT AND ASFB'S RIGHT TO PERFORM CONTRACTOR'S RESPONSIBILITIES**

## **13.1 TERMINATION BY THE CONTRACTOR**

**13.1.1** Upon seven (7) days' written notice to the ASFB, the Contractor may terminate this Agreement for any of the following reasons:

- 1** If the Work has been stopped for a thirty (30) day period
  - a** Under court order or order of other governmental authorities having jurisdiction;

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b As a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available; or

- 2 If the Work is suspended by the ASFB for sixty (60) days;
- 3 If the ASFB materially delays the Contractor in the performance of the Work;
- 4 If the ASFB otherwise materially breaches this Agreement; or
- 5 If the ASFB fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project.

13.1.2 Upon termination by the Contractor in accordance with Subparagraph 13.1.1, the Contractor shall be entitled to recover from the ASFB payment for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization cost. In addition, the Contractor shall be paid an amount calculated as set forth either in Subparagraph 13.3.1 or 13.3.2, depending on when the termination occurs, and Subparagraphs 13.3.3 and 13.3.4.

## 13.2 ASFB'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE

13.2.1 If the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially violates or breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for thirty (30) days after the Contractor receives from the ASFB written notice of such nonperformance or violation, then the ASFB may, upon fifteen (15) days' additional notice, without prejudice to any right or remedy otherwise available to the ASFB, terminate this Agreement.

13.2.2 Upon termination of this Agreement by the ASFB, shall be entitled to furnish or have furnished the Services to be performed hereunder by the Contractor by whatever method the ASFB may deem expedient. Also, in such case, the Contractor shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Contractor under this Agreement shall be the amount that is equitable under the circumstances. If the ASFB and the Contractor are unable to agree on the amount to be paid under the foregoing sentence, the ASFB shall fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly. The Contractor may dispute the ASFB's assessment of the termination amount by any method of dispute resolution permitted under this Agreement.

13.2.3 Upon the appointment of a receiver for the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, the ASFB may terminate this Agreement, without prejudice to any right or remedy otherwise available to the ASFB, upon giving three (3) working days' written notice to the Contractor. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the ASFB may terminate this Agreement by giving three (3) working days' written notice to the Contractor unless the Contractor or the trustee:

- 1 Promptly cures all breaches.
- 2 Provides adequate assurances of future performance.
- 3 Compensates the ASFB for actual pecuniary loss resulting from such breaches.
- 4 Assumes the obligations of the Contractor within the statutory time limits.

## 13.3 TERMINATION FOR CONVENIENCE

The ASFB may, upon thirty (30) day written notice to the Contractor, terminate this Agreement, in whole or in part, at any time for the convenience of the ASFB, without prejudice to any right or remedy otherwise available to the ASFB. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the ASFB, the Contractor's sole and exclusive right and remedy shall be to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination. The Contractor shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the ASFB.

## 13.4 SUSPENSION BY THE ASFB FOR CONVENIENCE

13.4.1 The ASFB may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the ASFB may determine to be appropriate for its convenience.

13.4.2 Adjustments caused by suspension, delay or interruption shall be made for increases in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

## ARTICLE 14

### DISPUTE RESOLUTION

- 14.1** If a dispute arises out of or related to this Agreement, or its alleged breach, and if that dispute has not been settled through direct discussions within a reasonable period, the parties to this Agreement agree to settle the dispute before a judicial forum. Each party further agrees that it will endeavor to follow a similar dispute resolution procedure to resolve any disputes against any third parties (including the Contractor and Project Manager) that may arise out of or relate to the work. In the event of any suit, action, or other proceeding to enforce or interpret the terms of this Agreement, the prevailing party, at trial and on appeal or in any bankruptcy proceeding, shall be entitled to recover reasonable Attorney's fees.

## ARTICLE 15

### MISCELLANEOUS PROVISIONS

- 15.1 ASSIGNMENT** Neither the ASFB nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 GOVERNING LAW** This Agreement shall be governed by the laws in effect at the location of the Project.
- 15.3 SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 15.4 NO WAIVER OF PERFORMANCE** The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition right with respect to further performance.
- 15.5 TITLES** The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.
- 15.6 OTHER PROVISIONS**
- 15.6.1 INTERNET COMMUNICATION**
- 1** The ASFB has directed the use of an Internet/web based project management software to track and manage the project. Each project team member shall have access to the Internet and an Internet e-mail address in order to communicate with various team members. The Contractor shall provide, immediately upon receipt of this Agreement, confirmation of these conditions and the names, positions, and e-mail addresses to Heery International, ASFB Internal Coordinator.
  - 2** The Contractor shall provide an adequate number of users to properly manage the project in accordance with the project schedule.
  - 3 Software requirements:**
    - a** A 32-bit operating system such as Windows 95 or Windows NT.
    - b** An Internet browser that supports HTML 1.1, tables, cookies, JavaScript, and frames.
    - c** Internet Explorer 5.0 or Netscape
  - 4 Hardware requirements:**
    - a** Pentium-based (or equivalent) workstation or laptop.
    - b** A connection to the Internet (48.8 baud or faster).
  - 5** All costs associated with using this system for the Contractor and its consultants, excluding computer hardware requirements, and software requirements listed above, are the responsibility of the ASFB.
  - 6** The ASFB encourages the Contractor to utilize the project management software for communication with its consultants.

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

## ARTICLE 16

## EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows:

Including quotes dated \_\_\_\_\_ pages

Total \_\_\_\_\_ pages

This Agreement is entered into as of the date entered in Article 1.

**OWNER:** Arizona School Facilities Board

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

PRINT NAME: Edward E. Boot

PRINT TITLE: Executive Director

**CONTRACTOR:** \_\_\_\_\_

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

# DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

## AMENDMENT NO. \_\_\_\_\_, DATED \_\_\_\_\_, TO THE DESIGN-BUILD AGREEMENT BETWEEN OWNER & CONTRACTOR

Pursuant to Paragraph 3.2 of the Agreement dated \_\_\_\_\_ between  
the \_\_\_\_\_ Arizona School Facilities Board \_\_\_\_\_, and  
the Contractor, \_\_\_\_\_,  
for (the Project), \_\_\_\_\_,

the ASFB and the Contractor desire to establish a GMP for the Work. Therefore, the ASFB and the Contractor agree as follows.

### LUMP SUM FIRM PRICE

The Contractor's LSFP for the Work, including the Cost of the Work as defined in Article 8 and the Contractor's Fee as set forth in  
Paragraph 7.3.1.2 is

\_\_\_\_\_ dollars (\$\_\_\_\_\_).

The LSFP is for the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

<b>EXHIBIT A</b>	RFP No _____, Dated _____	_____ pages.
<b>EXHIBIT B</b>	Allowance Items, dated _____	_____ pages.
<b>EXHIBIT C</b>	Assumptions and Clarifications, dated _____	_____ pages..
<b>EXHIBIT D</b>	A Schedule of Work, dated _____	_____ pages..
<b>EXHIBIT E</b>	Alternate Prices, dated _____	_____ pages..
<b>EXHIBIT F</b>	Unit Prices, dated _____	_____ pages..
<b>EXHIBIT G</b>	Additional Services included, dated _____	_____ pages..
<b>TOTAL</b>		_____ <b>pages</b>

DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN THE  
ARIZONA SCHOOL FACILITIES BOARD AND CONTRACTOR

DATE OF SUBSTANTIAL COMPLETION

The date of Substantial Completion of the Work is: \_\_\_\_\_.

This Amendment is entered into as of \_\_\_\_\_.

**OWNER:** \_\_\_\_\_ Arizona School Facilities Board \_\_\_\_\_

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_ Edward E. Boot \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_ Executive Director \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_